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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/336,339	06/18/1999	PAUL DUBELSTEN	2151-51823	7516

7590 03/26/2003

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EXAMINER

VARGOT, MATHIEU D

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 03/26/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-19

Office Action Summary

Application No.

09/336,339

Applicant(s)

DUBELSTEN et al.

Examiner

H. VARGAS

Group Art Unit

1732

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 12/20/02

☒ This action is **FINAL**.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-175 is/are pending in the application.
- Of the above claim(s) 1-92 + 96-175 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 93-95 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 13 + 18
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☒ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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1. Applicant continues to traverse the species election made in response to Office paper No. 10, maintaining that claims 82-92 and 96-119 should not be withdrawn. However, these different groups were considered to be different species due to their divergent subject matter. While they all may be directed to a composite product, since the properties of that product are different dependent on the claims involved, it is submitted that claims 82-92 and 96-119 have been properly restricted and withdrawn. It is noted that applicant did not traverse, or elected without traverse, claims 93-95 over the telephone in response to Office paper No. 16, mailed December 4, 2002.

At this point, all restrictions have been made final.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 93-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wold (col. 13, line 7 through col. 14, line 6; col. 14, lines 9-12 concerning the melting of the thermoplastic; the passage bridging columns 3 and 4 for the waste thermoplastic) in view of Radcliffe et al (col. 2, lines 54-64) essentially for reasons of record noting the following.

Although Wold discloses laying the individual layers down sequentially, so does applicant-- see the instant specification, the passage bridging pages 5 and 6. Hence, there appears to be no difference in how the core and outer layers would be laid down initially, and the pressing would provide for a unitary product as in the instant case. Concerning the pressing, see col. 14, lines 9-

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12 of Wold, which discloses that the temperature and pressure causes the plastic to “remelt and to migrate throughout the mat filling all interstices...” (col. 14, lines 11-12). This would provide essentially a unitary article. Note also that the instant claims do not require that the product be in a “single layer” as argued by applicant. If applicant persists in this line of argument, it is requested that it be pointed out where in the specification support exists for a “method by which such gradation would be achieved in a single layer” as noted by applicant at page 6 of the amendment. It is noted that the declaration was presented in the parent case and deals with the surface treatment claimed in that application. As such, it is not probative in assessing whether or not one of ordinary skill in the art would have employed a surface coating of plastic/wood fine mix onto the surface of a thermoplastic/wood product. It is submitted that if the coating works on wood, it would also work on wood/thermoplastic composite. The fact that Radcliffe et al does not use recycled or waste materials in the product is not germane.

3. Applicant's arguments filed September 9, 2002 have been fully considered but they are not persuasive.

It is submitted that Wold does indeed teach the instant reverse graduation of flakes in a thermoplastic/cellulose composite, with the longer flakes nearer the surfaces and the shorter flakes in the center, core portion. A preform is made in the same manner as the instant, with layers being successively laid down and then pressed under heat and pressure to form the final product. The only thing Wold lacks is the fines in the outer surface, such rendered obvious in the primary reference by the teaching of Radcliffe et al. Note that applicant applies face layers by laminating

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already formed faces to a pressed mat. Radcliffe et al coats the wood product with a polymeric layer containing fines and cures the layer. The declaration by Mr. Schroeder is directed to the surface treatment disclosed in the instant application and its facilitation of subsequent coatings or paintings on PE or PE/wood composites. The instant claims are not directed to this surface treatment and hence the declaration would not be probative with respect to the instant rejection.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Vargot whose telephone number is 703 308-2621.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0661.

M. Vargot

March 21, 2003

M. Vargot
MATHIEU D. VARGOT
PRIMARY EXAMINER
GROUP 1300

3/21/03